

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF OHIO

ROBERT AMELL,

Plaintiff,

vs.

WARDEN KEITH SMITH,

Defendant.

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: CASE NO. 5:10-CV-00191
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: OPINION & ORDER
: [Resolving Doc. No. [1](#)]
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JAMES S. GWIN, UNITED STATES DISTRICT JUDGE:

On January 27, 2010, Petitioner Robert Amell filed a petition for a writ of habeas corpus under [28 U.S.C. § 2254](#). The matter was referred to Magistrate Judge James Knepp, II, pursuant to Local Rule 72.2. On November 23, 2010, Magistrate Judge Knepp issued a Report and Recommendation recommending that the Court dismiss the petition due to procedural default and a failure on the merits. [[Doc. 6](#).]

The Federal Magistrates Act requires a district court to conduct a *de novo* review only of those portions of a Report and Recommendation to which the parties have made an objection. [28 U.S.C. § 636\(b\)\(1\)\(C\)](#). Parties must file any objections to a Report and Recommendation within fourteen days of service. *Id.*; [Fed. R. Civ. P. 72\(b\)\(2\)](#). Failure to object within this time waives a party's right to appeal the district court's judgment. [Thomas v. Arn](#), 474 U.S. 140, 145 (1985); [United States v. Walters](#), 638 F.2d 947, 949-50 (6th Cir. 1981). Absent objection, a district court

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may adopt the magistrate judge's report without review. See Thomas, 474 U.S. at 149.

In this case, Petitioner Amell has indicated that he will not be objecting to the Magistrate Judge's recommendation and will not pursue his issues further. [Doc. 7.] Moreover, having conducted its own review of the record and the parties' briefs, the Court agrees with the recommendation of Magistrate Judge Knepp that the petition should be dismissed. The Petitioner procedurally defaulted grounds two, three, four, six and seven of his petition; ground one asserts a violation of state law not cognizable in this action; and ground five fails on the merits because the state appeals court did not unreasonably apply federal law in determining there was no double jeopardy violation. [Doc. 6.]

Accordingly, the Court **ADOPTS** in whole Magistrate Judge Knepp's Report and Recommendation and **DENIES** Petitioner Amell's petition for a writ of habeas corpus. Further, the Court certifies, pursuant to 28 U.S.C. § 1915(a)(3), that an appeal from this decision could not be taken in good faith, and no basis exists upon which to issue a certificate of appealability. 28 U.S.C. § 2253(c); Fed. R. App. P. 22(b).

IT IS SO ORDERED.

Dated: December 17, 2010

s/ James S. Gwin
JAMES S. GWIN
UNITED STATES DISTRICT JUDGE